U.S. PASSENGER VESSEL DEVELOPMENT ACT

Y 4.M 53:103-99

U.S. Passenger Vessel Development A...

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TEE ON

COAST GUARD AND NAVIGATION

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 3821

A BILL TO PROMOTE CONSTRUCTION AND OPERATION OF PASSENGER VESSELS IN THE UNITED STATES, AND FOR OTHER PURPOSES

JUNE 14, 1994

Serial No. 103-99

Printed for the use of the Committee on Merchant Marine and Fisheries

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U.S. PASSENGER VESSEL DEVELOPMENT ACT

TUESDAY, JUNE 14, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:10 p.m., in room 1334, Longworth House Office Building, Hon. W. J. (Billy) Tauzin (Chairman of the Subcommittee) presiding.

Present: Representatives Tauzin, Barlow, Pickett, Hochbrueckner, Taylor, Coble, and Bateman.

Also present: Representative Unsoeld.

Staff Present: Full Committee—Jeffrey Pike, Chief of Staff; Suzanne J. Waldron, Press Secretary; Subcommittee—Elizabeth Megginson, Staff Director/Counsel; Catherine Tucker, Legislative Clerk; Bill Wright, Professional Staff; Minority—Harry F. Burroughs, Staff Director; Cyndi Wilkinson, Chief Counsel; Edward L. Lee, Professional Staff; Rebecca Feemster Dye, Counsel; and Margherita Woods, Staff Assistant.

STATEMENT OF HON. BILLY TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA, AND CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. TAUZIN. The committee will please come to order.

Good afternoon, ladies and gentleman. The Subcommittee is here today to hear from the Coast Guard on their views of H.R. 3821, the U.S. Passenger Vessel Development Act. This bill was introduced by Representative Jolene Unsoeld, from the great State of Washington.

First, I want to applaud her efforts in developing this legislation, which is intended to expand our U.S.-Flag and U.S.-built passenger vessel industry. Her legislation would allow foreign-built vessels to operate in the coastwise passenger trade provided the operator begins construction of a U.S.-built replacement vessel within three years.

Earlier this year, the Merchant Marine Subcommittee held a hearing on this bill. After the hearing, Chairman Lipinski wrote the Coast Guard requesting executive comment on Section 4 of the bill. This section would require these foreign-built vessels that request an interim coastwise passenger trade endorsement to only comply with the International Convention for the Safety of Life at Sea Standards (SOLAS). In the Coast Guard's letter, they raised concerns that the bill does not require other international and U.S. standards on these interim vessels that could affect the safety of

the passengers, the crew and the environment. We are here today to address these concerns in more depth.

Mr. TAUZIN. I will now turn to the Ranking Minority Member, who is not here yet, and to other Members for opening statements.

Mr. Coble, I know, is on his way. We will reserve time for him to address the committee.

Any other Members have opening statements?

I am pleased indeed to introduce Captain McGowan who will be making a statement for the Coast Guard today. He, as you know, is the Deputy Chief of the Office of Marine Safety, Security and Environmental Protection of the United States Coast Guard.

Captain, before you start, I note the author of the legislation has just arrived. I would be more than anxious, Jolene, if you would like to make an opening statement?

Mrs. UNSOELD. No, thank you, Mr. Chairman. I appreciate the offer. I came to listen and possibly comment.

Mr. TAUZIN. Thanks. We have been encouraged.

Also, I will note the presence of the Ranking Minority Member of our committee, Mr. Coble, my good friend. You are recognized.

STATEMENT OF HON. HOWARD COBLE, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, RANKING MINORITY MEMBER, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. COBLE. I apologize for my belated arrival. I am notified it is a special day today. I convey greetings to you, my friend. What, 28?

Mr. TAUZIN. Forty-nine, all over again.

Mr. COBLE. Congratulations.

Mr. Chairman, I want to thank you for giving our Subcommittee a chance to conduct a hearing concerning the United States Passenger Vessel Development Act. I would also like to praise our Merchant Marine and Fisheries Committee colleague, Representative Jolene Unsoeld, for introducing this legislation which is designed to jump-start the development of a U.S.-Flag cruise industry along our coasts.

Like the supporters of this bill, I believe that the establishment of a U.S.-Flag cruise industry would create thousands of new American jobs while bringing another important source of income to many of our Nation's ports and port cities.

I will be interested to hear from the Coast Guard about the provisions in the bill which would temporarily allow foreign-built vessels into the U.S. passenger trade. These vessels would not be required to meet U.S. safety standards.

While I strongly support the establishment of the U.S.-Flag cruise industry, I would not want to blindly suspend safety regulations which could put thousands of passengers at risk. I look forward to hearing from Captain McGowan.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Coble.

Any further opening statements?

I will go back to our witness and introduce you again.

Captain Jack McGowan will present the Coast Guard's testimony. As you know, we are particularly interested in the Coast Guard's response to Section 4, and the request for information by Mr. Lipinski's Subcommittee.

I would appreciate a summary of your testimony. Your written statement is by unanimous consent a part of the record. Perhaps you could summarize your statement for us today.

STATEMENT OF CAPTAIN J.F. McGOWAN, DEPUTY CHIEF, OFFICE OF MARINE SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION, UNITED STATES COAST GUARD

Captain MCGOWAN. Mr. Chairman, I too appreciate you having me over here. May I add the Coast Guard congratulations to your celebration today?

I appreciate the opportunity to discuss with you the Coast Guard's concerns over H.R. 3821, the U.S. Passenger Vessel Development Act. I hope my recommendations for resolving these concerns will be helpful to the committee in ensuring the level of safety required of all vessels carrying passengers from U.S. ports.

As the members of this committee are aware, the Coast Guard has been aggressively pursuing a program to: identify and eliminate regulations that are outdated or duplicate acceptable alternative standards; and facilitate the ability of our domestic maritime industry to compete in the international arena.

This program is called Maritime Regulatory Reform and it charts a new course toward safety at sea, protection of the marine environment, and the regulation of our domestic maritime industry.

The Coast Guard also wants to ensure that foreign vessels, as a result of H.R. 3821, are registered in the U.S., do not compromise the existing safety standards we have worked hard over the years to establish.

As you know, the Coast Guard is a world leader in improving maritime safety standards. We are concerned about any proposal that would require us to place a Coast Guard Certificate of Inspection on a passenger vessel based solely on the fact that it possessed a valid SOLAS document issued by another government.

Possession of an international safety certificate is no guarantee that a vessel is built, equipped, crewed and maintained to acceptable international safety standards.

We want to be sure that this bill does not tie our hands when it comes to verifying whether a particular vessel is in a condition to safely carry passengers from our ports. With this in mind, we believe that H.R. 3821 can be drafted in such a way to accomplish the "reflagging" you desire, while providing the levels of safety essential to protect passengers, the ports, and the marine environment.

Section 4 of the bill would amend Section 2113 of Title 46 United States Code. The proposed amendment provides that a documented vessel with an interim coastwise passenger trade endorsement is deemed to comply with Parts B, C and J of Title 46 U.S.C. if the vessel met the standards for passenger vessel construction under the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, commonly referred to as SOLAS 74/78, as amended.

Parts B, C and J of Title 46 concern the inspection and regulation of vessels, loadlines of vessels, and measurement of those vessels respectively.

Enactment of the amendments contained in Section 4 of this bill would create a serious inspection problem for the Coast Guard, and could jeopardize the safety of passengers carried aboard these.

Allow me to elaborate and provide you with a better understanding of why we have objections. I will also suggest some changes to this bill that will resolve our concerns regarding acceptance of the vessels certificated under this proposed legislation.

First and foremost, the Coast Guard's concern is for safety. The Section 4 amendments explicitly provide that compliance with 74/78 SOLAS alone does not satisfy all of the safety areas covered by our domestic laws and regulations.

In practice, SOLAS 74/78 is intended to be applied in concert with regulations established by the government which has registered the vessel and the vessel's classification society.

For example, many SOLAS 74/78 regulations allow individual governments to set their own performance standards for the particular safety system or component addressed in the SOLAS regulations. Foreign performance standards may not always provide the level of safety necessary to be accepted as a prima facie equivalent to the corresponding U.S. requirements.

In addition, there are important areas which SOLAS 74/78 doesn't cover at all, including technical details pertaining to the hull structure. Such matters would only be addressed by the flag state, if at all.

Most governments, including the United States, incorporate classification society rules and standards to regulate in these areas. For instance, Coast Guard regulations incorporate by reference certain standards and rules established by the American Bureau of Shipping. These rules have been examined and satisfy the Coast Guard's concerns for hull structures. However, other classification societies' rules which have been accepted by foreign governments have not been similarly examined and may not necessarily provide an equivalent level of safety.

Finally, just because a vessel meets rules specified in SOLAS does not mean that it automatically meets the Coast Guard's safety standards. There are other international maritime safety and pollution prevention treaties which address matters that are not covered by SOLAS 74/78.

Compliance with these treaties establishes that a vessel meets the minimum internationally acceptable standards for safety, sanitation, crewing, and pollution prevention.

Vessels inspected and certificated by the Coast Guard under present law meet these international conventions. Our regulations either parallel the international requirements, or the international requirements themselves have achieved the force and effect of U.S. law through other legal mechanisms.

We do, of course, permit many foreign-flag passenger vessels to enter our ports and embark passengers every day. We allow these vessels to trade in our waters because the existing statutory scheme authorizes the Coast Guard to ensure that these ships meet our safety standards. I believe we can use this program as the model to achieve the aims of your bill.

To embark passengers at U.S. ports, foreign-flag passenger vessels must meet rigorous Coast Guard examination requirements.

These examinations, known as Control Verification Examinations, are carried out under the authority of Title 46 USC 3505.

Upon successfully meeting these exam requirements, a vessel is issued a Control Verification Certificate which is valid for 12 months, subject to quarterly reexaminations.

A foreign passenger vessel may not embark passengers from our ports unless it has a valid Control Verification Certificate.

Briefly, the CVE process determines whether foreign-flag passenger ships are in substantial compliance with relevant international SOLAS Maritime Safety Conventions. During a CVE, the Coast Guard also determines whether the vessel is in compliance with applicable domestic requirements.

As I mentioned previously, SOLAS 74/78 and the other applicable international conventions, allow the various governments some latitude in interpreting requirements and setting performance standards for particular safety systems or components installed on their own vessels.

The plan review process includes a review of the vessel's construction plans by the Coast Guard's Marine Safety Center, Washington, D.C. The vessel design, equipment, and arrangements are reviewed and examined to determine compliance with applicable international standards as interpreted by the United States.

The Coast Guard has recorded a number of interpretations and set performance standards with the International Maritime Organization which promote the highest levels of safety.

Foreign-flag passenger vessels wishing to embark passengers from the United States must meet the Coast Guard's interpretations and performance standards.

In addition, on-board examinations are carried out by Coast Guard Marine Safety Inspectors to verify whether the vessel is actually designed and outfitted and maintained as indicated on its approved plans.

We also check its lifesaving, firefighting, machinery, navigation, and pollution prevention equipment to make sure that it complies with applicable requirements. Inspectors also assess crew proficiency in firefighting and ship evacuation procedures.

Many, but not all foreign governments and classification societies, are familiar with our CVE process and have designed and equipped their vessels to meet the Coast Guard's interpretations and performance standards. But, mere possession of international certificates is not always sufficient to authorize the vessel to embark passengers from a U.S. port.

We feel that foreign passenger vessels which hold a valid Control Verification Certificate have demonstrated a level of safety sufficient to allow them to operate in the coastwise passenger trade on the interim basis as proposed in this bill.

Of course, the vessel would have to be maintained in full compliance with the conditions for a CVE during the entire term of its interim coastwise trade endorsement. This program could also be open to those foreign passenger vessels which do not currently have a Control Verification certificate, but which successfully go through the process.

Therefore, the Coast Guard would have no objection to an amendment to Title 46 which adheres to the requirements of a U.S.

Coast Guard Control Verification Certificate to be in compliance with Parts B, C, and J of Title 46 U.S. Code, Subtitle II.

Such an amendment would also provide that the vessel may be documented with an interim coastwise passenger trade endorsement.

As I conclude, Mr. Chairman, we have several technical concerns which I would like to submit for the record, which I have provided as an appendix to my statement.

H.R. 3821 amends Subtitle II of Title 46 USC. As such, it should not have provisions with limited duration, which is what this bill would do. If this codification is still desired, we recommend that the bill provide as a standard coastwise endorsement with a sunset for the new interim sections.

Thank you for allowing me to provide the Coast Guard's views on this bill. We look forward to working with you to make the necessary improvements.

I would be happy to answer any questions which you may have.

Mr. TAUZIN. Thank you, Captain McGowan.

As I understand your testimony, if the bill were amended to require each vessel applying for an interim coastwise passenger trade endorsement to have a U.S. Coast Guard Control Verification Certificate, would the Coast Guard be in support of or neutral on the measure?

Captain MCGOWAN. With those changes and a few technical changes in the first appendix to the written statement, we have no objection at all.

Mr. TAUZIN. I have looked through the set of technical amendments. They do not seem very difficult to work through. The one, of course, that stands out is the codification for a sunset provision on the new interim sections. Would you explain that quickly for us?

Captain MCGOWAN. As a footnote, as such, it does not—the current bill, H.R. 3821, does not have provisions with limited durations with what this bill would do. If this codification is still desired, we recommend the bill provide, as a standard coastwise endorsement does, a sunset provision for the new interim sections and not leave it open-ended for all time and all days, Mr. Chairman.

Mr. TAUZIN. Assuming the bill were amended with the requirement for these Coast Guard certificates and documents as an interim coastwise passenger trade vessel, would the level of safety and protection be as high as they would be for a U.S.-Flag vessel operating in coastwise trade?

Captain MCGOWAN. Yes, Mr. Chairman, we feel that they are virtually—put it in virtual parity, not only with the U.S. vessel, but also with all of the passenger liners currently carrying passengers to and from our ports on a daily basis, sir.

Mr. TAUZIN. Thank you.

Mr. Coble?

Mr. COBLE. Thank you, Mr. Chairman.

Captain, I will sort of extend what the chairman said to you. You indicated in your statement the manner in which the Coast Guard would suggest that H.R. 3821 be amended to provide for the adequate safety of the passengers who will travel aboard these proposed foreign-built U.S.-Flag passenger vessels.

In your opinion, would these additional safety requirements interfere with the legislation's goal and intent of creating a U.S.-Flag coastwise cruise industry?

Captain McGOWAN. Mr. Coble, no; we do not make that proposition to interfere with this legislation.

Mr. COBLE. I just wanted to be sure you weren't.

Captain McGOWAN. No, sir. We make this proposal because we feel historically the intent of the committee as well as this subcommittee is a strong interest in safety in the passenger vessel industry. We want to provide the same level of safety as is aboard those foreign passenger vessels operating today. We just need to include the other international conventions that have either taken effect under U.S. law or which the U.S. has been applying domestically. We also apply an active plan review program, to ensure vessels, when they are built, indeed have the design features attached to them that were identified in the plans. Active Coast Guard examinations ensure that when the vessels are in service, they are maintained to those same standards.

Mr. COBLE. As evidenced by my opening statement, I share that concern about the possibility of relaxing safety standards. To usurp words, I don't want to see the Coast Guard's hands tied when it comes to enforcing safety rules and regs.

Captain, do you have an opinion satisfactory to yourself whether or not the owners of these U.S.-Flag cruise ships would encounter any sort of difficulty or problem in manning their vessels with U.S. citizens?

Captain McGOWAN. I don't have an opinion, sir. I think it would be best to seek out that information directly from them.

Mr. COBLE. I would like to know that, the answer to that, if that can be dug up by someone.

Captain McGOWAN. We would be happy to furnish for the record an indication of the number of mariners available to take those kinds of jobs.

[The information follows:]

LICENSED AND DOCUMENTED MERCHANT MARINERS

The following are the most recent figures on U.S. Coast Guard licensed and documented merchant mariners:

Number of active licenses (issued, renewed, endorsed after 1 Jun 89)

Master, Oceans	9,895
Chief Mate, Oceans	1,631
Second Mate, Oceans	1,976
Third Mate, Oceans	3,484
Chief Engineer	4,700

Number of active merchant mariner's documents (originals, renewals, supplementals issued since 1 Jun 89)

Able Bodied Seamen	3,913
Ordinary Seamen	22,879
Qualified Member of the Engine Dept	1,960
Wiper	26,399
Steward's Dept.	1,709

Mr. COBLE. Perhaps the sponsor might be able to assist me in that end. I think that is a question that needs to be addressed.

Let me, Mr. Chairman, if I may, ask one final question: the supporters, Captain, of this legislation hope and believe that it—that

passage of said legislation will help disseminate cruise operations to a number of United States ports which currently serve few or no such cruise ships.

I have a two-fold question, or two-pronged question: Are there sufficient passenger-handling facilities in these ports along the coasts to handle this increased passenger traffic, number one? Number two, would there be an adequate Coast Guard presence at these ports to safely handle this increase in vessel traffic?

Captain MCGOWAN. Without knowing which ports——

Mr. COBLE. As I said, you may not be able to answer that today.

Captain MCGOWAN. Yes, sir. Without knowing which ports are on the marketing plan, Mr. Coble, that is very difficult to answer. In a prior assignment, being in a port in Portland, Maine, which was used by foreign passenger liners carrying in passengers for day trips and all, I do know the industry as well as port authorities can be very creative in taking—in eliminating limits when it comes to getting port facilities in shape to accept these types of vessels. I witnessed it. So I have no strong concerns there.

As far as a Coast Guard presence is concerned, I think all of our coastline, no matter how remote the ports now, is covered by one area of responsibility of a Coast Guard unit or other; and I don't think we face the same concerns as we are currently looking at in the river system with the burgeoning gambling industry and a Coast Guard presence that just was not designed with that in mind. Coastwise service, though, large ports, small, I think we are in pretty good shape.

Mr. COBLE. I thank you, Captain.

I thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Coble.

The Chair now recognizes the author of the legislation, Mrs. Unsoeld, the gentlelady from Washington.

Mrs. UNSOELD. Thank you, Mr. Chairman. Thank you, Captain, for your testimony.

For the record, so that we have this established, is it correct that foreign-flagged passenger vessels calling in U.S. ports must comply with the Coast Guard's control verification program?

Captain MCGOWAN. Yes, ma'am. That is correct.

Mrs. UNSOELD. Then I believe, Mr. Chairman, that applying these standards is not only appropriate, but it is consistent with my objective of providing a level playing field. I believe we should incorporate this into the bill.

I appreciate the Coast Guard's comments on this issue so we could get that clarified because that was indeed the intent.

In response to Mr. Coble's questions, we feel that we have put plenty of incentives in to give the American cruise ship industry a boost. We recognize there may be some additional costs because of labor costs; but we think we have overcome that with the incentives; and certainly we anticipate full U.S. crews for the professionally operating jobs.

We recognize there may be some trade-offs or something on down the line, but there has been no indication of that need at this point; and we are hanging loose.

Mr. TAUZIN. Any further questions?

Mrs. UNSOELD. No.

Thank you, Mr. Chairman, for helping to get this clarified so we can recognize that indeed we are trying to apply the same standard. Thank you.

Mr. TAUZIN. Thank you very much, Mrs. Unsoeld.

Mr. Bateman?

Mr. BATEMAN. Thank you, Mr. Chairman.

The bill has as one of its paramount objectives augmenting job availability for American mariners and American shipbuilders and its requirement that within X number of years, you are going to reflag or pursue this endeavor in foreign-built ships and that you must obligate yourself to build ships in American shipyards.

Is that provision enforceable?

Captain MCGOWAN. That is——

Mr. BATEMAN. Or is that beyond your jurisdiction?

Captain MCGOWAN. It is and it is not, sir.

We—the Coast Guard's major role in new buildings under U.S.-Flag and U.S. shipyard would be to ensure the design, the equipment, the manning requirements in fact, are met. Our documentation requirements have a basic assumption and premise behind them that in order to carry a U.S. flag, the vessels would have to be built in the United States. While our major thrust is on the safety issue, that is part and parcel of the documentation requirements just to be able to put a U.S. flag aboard the vessels.

Mr. BATEMAN. My concern is if the legislation were enacted and we launch upon this program, any company made a commitment at a point in time to construct American ships, and then thereafter did not do so, do we have remedies?

Captain MCGOWAN. That clearly is outside the Coast Guard realm of authority, sir. I cannot answer that question.

Mr. BATEMAN. I can understand.

Mr. TAUZIN. Would the gentleman yield?

Mr. BATEMAN. Yes.

Mr. TAUZIN. The gentleman should be advised that during Mr. Lipinski's hearing on the bill, I understand this issue came up. It was noted there were no penalties in the bill for failure of the owner to comply with the requirements should something go wrong with the contract.

Perhaps you would like to yield to Ms. Unsoeld?

Mrs. UNSOELD. Thank you.

We are incorporating some of those hammers into the bill as the draft that will be substituted as an amendment next week in Mr. Lipinski's committee because we do recognize the need to be able to hold them to their commitment.

Mr. BATEMAN. I apologize for the fact that apparently I was absent at the last deliberations on the bill. I think it represents a very important area of concern. I have little incentive to facilitate the reflagging of foreign-built ships unless there is something in it for the American domestic shipbuilding industry and merchant marine.

If we are not going to vouchsafe that that is, in fact, going to happen, I don't know if we have accomplished anything.

Mrs. UNSOELD. We share that objective.

Mr. BATEMAN. Thank you.

Mr. TAUZIN. I would just point out to the gentleman that our jurisdiction, of course, is limited to the Coast Guard's role in this. While that is a very serious concern, the Chair understands we will have a chance at Full Committee to address those issues. We may want to have referral to our committee for the Coast Guard issues, particularly for the recommendations the Coast Guard made.

We will have a chance to discuss that with the author at a later date. I thank the gentleman for allowing me to make that statement.

The gentleman from Kentucky, Mr. Barlow?

Mr. BARLOW. No questions.

Mr. TAUZIN. The gentleman from Virginia, Mr. Pickett?

Mr. PICKETT. Mr. Chairman, I am not sure this has indeed been made clear in the record, but my understanding of your testimony is the recommendations you are making for changes in this legislation would allow the Coast Guard to make the same requirements of these vessels as they make of foreign vessels, but no more? As far as safety is concerned?

Captain MCGOWAN. That is correct, sir.

Mr. PICKETT. Thank you.

That is all I have, Mr. Chairman.

Mr. TAUZIN. Thank you very much, Mr. Pickett.

The gentleman from Mississippi, Mr. Taylor?

Mr. TAYLOR. Thank you, Mr. Chairman.

Let me begin with the author.

Mrs. Unsoeld, I share Mr. Bateman's concerns. I do welcome your input. I think the more people that are concerned with the industry, the better. Certainly you give this a geographical diversity we haven't had.

I do share the gentleman's concerns that if a slick operator purchases foreign-flagged vessels, puts a few American seamen on board, 36 months later, and then sells it to his brother who now has another 36 months to buy an American vessel at which point he sells it to his wife; again, there are attorneys who figure out a way to unravel the laws we write.

Would you consider with that in mind something in the nature of posting a bond for the person who purchases that vessel?

Mrs. UNSOELD. That is one of the things we are looking at. Also there are points in time prior to that three years that there has to be a demonstration of good faith by certain commitments being made.

Mr. TAYLOR. You would not rule out posting a bond that could be used toward the construction?

Mrs. UNSOELD. No, I do not.

Mr. TAYLOR. Thank you, Mrs. Unsoeld.

Captain, if you would, you say coastwise passenger trade. I take it by definition that would not include the inland rivers?

Mrs. UNSOELD. What?

Mr. TAYLOR. Inland rivers?

Captain MCGOWAN. I will have to take that and get back to you on that.

Mr. TAYLOR. One of the few places we do have an active U.S.-built, U.S.-crewed is the Delta River, the Mississippi Queen, the Delta Queen. I would hate to put them at a disadvantage with the

U.S.-built vessels to someone going out and building a foreign-flagged river boat, sticking it in on one of our inland rivers and going into direct competition with them, what would probably be a less expensive vessel.

If you can get us a clarification on that, I would appreciate it.

Captain MCGOWAN. I will be happy to, Mr. Congressman.

[The information follows:]

DEFINITION OF "COASTWISE TRADE"

The term "coastwise trade" includes voyages between ports on the inland rivers.

Mr. TAYLOR. Captain, I realize we are talking about a very large vessel; that in all probability we would rule out most vessels engaged in the offshore oil business, but possibly not quarter boat business, which I think some of them have 175 berths.

Would this in any way allow someone to go out and buy a foreign-flagged quarter boat and engage in the domestic trade for 36 months? I would sure hate to open up that can of worms.

Captain MCGOWAN. I am not familiar with the term quarter boat.

Mr. TAYLOR. That is a vessel used in the offshore business where people who work on drilling rigs or laying pipes sleep. It is where the quarters are. Some of them are pretty large. Some of them are 175 beds. I would hate to put someone who made an investment in an American-flagged vessel at a disadvantage by saying "By the way, your competitor can buy a foreign made and compete against you."

If you could research that, and just—somehow convince me that in trying to solve the problem Mrs. Unsoeld brought to our attention, we do not create new problems.

Captain MCGOWAN. I can probably answer that one right while we are here. The requirements and changes that we are proposing to impose, not only SOLAS 74/78, but the pollution prevention regulations, loadline convention, et cetera, the basic filter in those international standards and our domestic policies in applying them causes an owner and designer just about the first thing before steel is certainly cut is to decide cargo vessel versus passenger vessel.

The majority of the companies involved in the oil and mineral industry have for years chosen the cargo vessel route. By Coast Guard policy, that implies ceilings on the numbers of people that can be aboard; but internationally, it implies you can carry no more than 12.

It is likely that that filter that would prohibit a cargo vessel which the oil and mineral industry again have chosen in the vast majority of cases would prohibit taking those types of vessels and converting them into the passenger trade. They just would not be able to meet structural fire protections, stability, firefighting, lifesaving requirements. It is a different breed, sir.

Mr. TAYLOR. Refresh my memory. Didn't the Oil Act of 1990 require certain operators to have certificates of financial responsibility?

Captain MCGOWAN. Yes, sir.

Mr. TAYLOR. Is that being enforced by the Coast Guard now or do you have to bring in another government agency to research those and make sure they are valid?

Captain MCGOWAN. The regulations implementing the new requirements for them are pending and are pending at the moment, sir.

Mr. TAYLOR. What I am leading to is if this committee—if it were to be the will of the majority to require a bond, would it be within reason to ask the Coast Guard to be the agency that could make sure it is indeed a valid bond that should the owner-operator fail to live within the three year provisions, they would be in a position to make sure there was actually something there to collect on?

Is that a reasonable thing to ask of the Coast Guard?

Captain MCGOWAN. I think the subcommittee has options. The Coast Guard, the Maritime Administration, another body would certainly be—that is a fair question, sir.

Mr. TAYLOR. Would you be kind enough to make some recommendations along those lines?

Captain MCGOWAN. Sure.

Mr. TAYLOR. As to who the enforcing agent should be?

Captain MCGOWAN. To clarify it, that is, should you decide to include a bonding provision to allow someone to make a promise, if you will, and then to prevent them from switching owners and operators so the three-year clock never runs out?

Mr. TAYLOR. Yes, sir.

Captain MCGOWAN. Yes, sir.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. TAUZIN. The gentleman from North Carolina, Mr. Coble, had additional questions.

Mr. COBLE. I will be brief. I was going to ask you this when I put the question to you about whether or not there would be difficulty in manning crews with U.S. citizens.

I just want this for the record, Mr. Chairman, because I doubt, Captain, you know the answer to this either.

I am concerned about what sort of living conditions would be available, berthing quarters, for example, aboard some of these foreign-flagged cruise ships. What sort of pay would be forthcoming to some of these workers?

I am just wondering—I don't mean to be a paragon of pessimism, but if it is real bad, unsavory, I am wondering if it would be acceptable to the American citizenry and to maritime labor for that matter.

If you have an opinion, Captain, I would be glad to hear from you about it. I want that on the record.

Captain MCGOWAN. Mr. Coble, as you may recall, we are very, very proud—as of May 1 of this year, we launched in the Coast Guard a new boarding program. The focus of that program is on foreign vessels. It includes foreign cargo vessels, tankers, as well as large and small passenger vessels; and certainly foreign passenger liners.

The purpose of that program is to direct Coast Guard resources where we feel the risk is highest and to take steps to reduce that risk in the quickest and most substantial manner. One of the ways to do that is put the Coast Guard Marine Inspectors on the vessels that are most suspect, if you will.

When that program began May 1, it began using a new targeting scheme or scoring scheme, if you will. It identified 15 countries

that have been identified by our past records over the last year of being associated with the operation of substandard vessels of all three of those categories.

It has identified companies, over 120 of them, that have also been identified as operating or been associated with the operation of substandard vessels over the past year. Each one of those vessels are tracked, recorded, and distributed.

The information is available throughout all of our Coast Guard offices throughout the country so that every time they arrive, starting with the Coast Guard petty officer who normally will be pulling information out of our computer system very early on each day, will apply this scoring scheme so that the Coast Guard captains of the ports can decide which one of the vessels to board if he has limited—he or she, if they have limited resources available that day. Among one of the conventions and international treaties that would fall within our recommendations on how this bill could be improved is ILO Resolution 147; that although it does not address the issue of pay in your question, it certainly does address sanitary living conditions, working conditions aboard the vessels and that would also apply on foreign passenger liners.

Mr. COBLE. Thank you, Captain.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Coble.

The Chair recognizes the gentleman from New York, Mr. Hochbrueckner for questions.

Mr. HOCHBRUECKNER. No questions, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Hochbrueckner.

Captain, you are probably not the one to ask this. I may need to direct this over to Ms. Unsoeld. It is my understanding the Federal Maritime Commission does require an amount set aside to protect purchases of passenger vessel tickets to guarantee a refund on the nonperformance of service by the vessel owner. This is put in some sort of escrow account.

You may not be aware of it. It may be something to look into regarding the kinds of hammers you are going to design to guarantee performance and a requirement to hold money in escrow may be one of them. Would you like to comment on that?

Mrs. UNSOELD. We do have such an insert that is going to be placed into the revised bill. I was going to offer to give both Mr. Bateman and Mr. Taylor a copy of that in the next day or two so they can look it over.

It is our anticipation the Secretary of Transportation would be—have the primary responsibility and could either delegate that to the Coast Guard or to MARAD to implement.

Mr. TAUZIN. Any further questions for the Captain?

Captain, we thank you very, very much. We think the suggestions you have made are, as the author of the bill indicated, quite constructive. We will take them under advisement.

Mrs. Unsoeld, we will need to visit with you and your staff to see about the process on the bill. Again, we want to congratulate you for introducing this bill. We hope we can work with you to alleviate concerns to make it a progressive step and to encourage the construction of new U.S. coastwise vessels.

Thank you for your efforts here.

Also, I want to make a unanimous consent request that statements Rep. Bill Lipinski and Rep. Jack Fields be inserted in the record, without objection.

[The statements follow:]

STATEMENT OF HON. WILLIAM O. LIPINSKI, A U.S. REPRESENTATIVE FROM ILLINOIS, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Good afternoon, I would first like to thank Chairman Tauzin for holding this hearing. Last April, the Subcommittee on Merchant Marine held a hearing on H.R. 3821 and its companion bill, H.R. 3822. Following that hearing, I wrote to Admiral Kime, who was Commandant of the Coast Guard at that time, asking for his comments regarding the inspection provisions in H.R. 3821. At this time I would ask that a copy of the Admiral's response be made a part of the record. (The information may be found at end of hearing.)

H.R. 3821 is designed to stimulate the construction and operation of U.S.-flag cruise vessels. I am sure my colleagues on this Committee join me in supporting this worthy goal. I am sure that we can find a way to do this without compromising the safety of American cruise ship passengers.

I would like to thank the Coast Guard for their cooperation and for appearing here today to assist us.

In closing, I would like to recognize Mrs. Unsoeld for her hard work and congratulate her on a fine piece of legislation.

Thank you, Mr. Chairman.

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, this is the second hearing held in our Committee on H.R. 3821, the United States Passenger Vessel Development Act. This bill, coupled with H.R. 3822, United States Passenger Vessel Development Tax Act, is intended to provide the economic stimulus necessary to promote a U.S.-flag cruise vessel industry.

H.R. 3821 is a step in the right direction. I support efforts such as these to allow U.S. companies, operating U.S.-flag vessels, to capture part of the cruise business in this country. Unfortunately, without the tax incentives contained in H.R. 3822, the future of this venture is uncertain. Regardless, H.R. 3821 has ideas that are worthy of consideration, and I am pleased that our Committee is moving forward with this legislation.

I understand that the Coast Guard has safety concerns with the reflagging procedure required in H.R. 3821. Above all, strong safety requirements must continue to be met in the passenger vessel industry. I am hopeful that the Coast Guard's safety concerns can be addressed as we develop this legislation, and that we can move forward on this bill before the end of this session.

Thank you, Mr. Chairman.

Mr. TAUZIN. Captain, thank you for your testimony.

Without objection, the hearing stands adjourned.

[Whereupon, at 2:50 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

U.S. Department of Transportation
United States Coast Guard

Commandant
U.S. Coast Guard

2100 Second Street S.W.
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DEPARTMENT OF TRANSPORTATION

U. S. COAST GUARD

APPENDIX I

Proposed sec. 12113(a)(2) requires ownership by or charter to a person who is a citizen within the meaning of proposed sec. 2(e) of the Shipping Act, 1916 (sec.5 of this Bill). It is unclear who would be responsible for determining citizenship of the charter under this provision.

Proposed sec. 12113(a)(3), potentially conflicts with the provisions of Section 4 of the Bill, proposed sec. 2113(b). Proposed sec. 2113(b) implies that satisfaction of SOLAS construction standards will satisfy tonnage standards. Thus, arguably a vessel is deemed to comply with tonnage, including the requirements of title 46, Chapter 143, if it satisfies SOLAS construction standards. Beside the point that construction standards would seem to have little to do with tonnage admeasurements, proposed sec. 12113(a)(3) seems to specifically require compliance with Chapter 143. Deeming compliance with tonnage by satisfaction of construction standards, as stated in proposed sec. 2113(b), would not be consistent with any previous maritime practice.

Proposed sec. 12113(a)(4) uses the term "ferry" which is not defined in title 46, U.S. Code.

Proposed sec. 12113(b) states that the Secretary may require the owner or charterer to enter into "one or more" contracts to build

a vessel in the United States. Clarification is needed as to whether the contracts can be changed, or what happens if a contract is breached. It also states that vessels for such contracts must have a total berthing capacity that is 80 percent of the capacity for the vessel for which the endorsement is issued. Does this mean each contract must be for a vessel with 80% of the endorsed vessel's capacity? Or does it mean that if two contracts are formed, then each vessel contracted for may have 40% capacity as that of the endorsed vessel; 4 vessels, then 20% etc.?

Proposed sec. 12113(d) discusses termination of a demise charter under "subsection (a)(2)(B)". There is no such provision. We assume it means (a)(2). Also, the endorsement may continue for up to six months, on "any terms and conditions" prescribed by the Secretary. This language is too vague because it contains no guidance on which to base a condition or term.

Proposed sec. 12113(e)(1)(A)(i) is confusing when read with proposed sec. 12113(b) which appears to require entry into a contract for a new U.S. built vessel prior to issuing the interim endorsement. Proposed subsection (e) would permit entry into a contract 24 months after issuance of the endorsement. Proposed paragraph (C) of subsection (e)(1) requires construction to begin within 3 years of the issuance of the interim endorsement. Since it is difficult to determine when construction "begins", we recommend using the date the vessel is delivered rather than when construction begins.

Proposed sec. 12113(a) employs a new trade endorsement "interim coastwise passenger" without defining it. Proposed sec. 12113(f) prohibits certain vessels from operating in "any trade that is served by" another particular type of passenger vessel, unless certain criteria are met. It is unclear what is meant by "any trade" served by another similar vessel and it is unclear who would make and enforce this determination. Furthermore, it appears that under the proposed language, a U.S. passenger vessel could "bump" the one with the special endorsement merely by deciding to operate in the same area.

Section 3(c) of the bill amends section 9 of the Shipping Act, 1916. If the effect of proposed subsection (e) is to authorize a vessel to be placed in foreign registry and maintain U.S. registry, we object to it. Clarifying language should make it clear that the U.S. registry cannot be maintained if the vessel is to be placed under foreign registry. In other words, we are not creating an exception to 46 U.S.C. § 12102.

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

Washington, D.C. 20593-0001
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MAY 16 1994

The Honorable William O. Lipinski
Chairman, Subcommittee on Merchant Marine
Committee on Merchant Marine and Fisheries
House of Representatives
Washington, DC 20515-6230

Dear Mr. Chairman:

This is in response to your letter of April 20, 1994, which requested the Coast Guard's views on Section 4 of H.R. 3821, the United States Passenger Vessel Development Act. This provision would allow foreign vessels built to the International Convention for the Safety of the Life at Sea (SOLAS) standards to operate in the U.S. coastwise trade on an interim basis.

Enactment of the amendment contained in Section 4 of this Bill would create a serious inspection problem for the Coast Guard and jeopardize the safety of the passengers carried on these vessels. The proposed amendment errs in that it apparently accepts compliance with SOLAS alone as sufficient to provide for the safety of the vessel and its passengers. The SOLAS treaty is meant to be supplemented by classification society standards and flag state regulations. For example, SOLAS does not specify certain design, construction, and equipment requirements which are addressed in domestic regulations, nor does it cover relevant workplace safety and health matters in areas in which the Coast Guard is the responsible Federal agency.

In addition, other international treaties such as the International Convention for the Prevention of Pollution from Ships, 1973, and its Protocol of 1978; the International Convention on Load Lines, 1966; the International Convention on Standards of Training, Certification and Watchkeeping, 1978; and the Merchant Shipping (Minimum Standards) Convention, 1976 (International Labor Organization Convention No. 147) cover important pollution prevention, vessel safety, crew qualification, and workplace safety and health areas not addressed by SOLAS. Compliance with all of these is a prerequisite to the issuance of a Coast Guard Certificate of Inspection for international service.

SUBJ: RESPONSE TO CHAIRMAN LIPINSKI'S LETTER OF APRIL 20, 1994, CONCERNING INSPECTIONS FOR VESSELS BUILT UNDER SOLAS STANDARDS

I believe that the proposed amendment, as drafted, will not ensure that the affected vessels establish and maintain an acceptable level of safety. To provide an acceptable level of safety, it is necessary to apply additional U.S. law and Coast Guard regulations to address areas where SOLAS is vague or silent.

The Coast Guard has established policies and procedures for transitioning foreign flag vessels to U.S. flag (reflagging). At present, existing foreign flag vessels may be brought under the U.S. flag in a manner consistent with the principles and levels of safety in current Coast Guard regulations. Where international standards are deemed to provide a level of safety equivalent to our laws and regulations, they are accepted. Specific systems and components are accepted on the basis of performance standards. Inspection requirements must be equivalent to those of a comparable U.S. vessel. Adherence to the inspection requirements established by SOLAS alone is not considered equivalent to requirements imposed on a comparable U.S. vessel.

I recommend that Section 4 be amended to require that the affected vessels comply with established procedures for reflagging. Under this process, vessels previously operated under foreign domestic standards can be transitioned to U.S. flag while ensuring an appropriate level of safety.

Thank you for allowing me to comment on this proposed legislation.

Sincerely,

J. W. Kime

J. W. KIME
Admiral, U. S. Coast Guard
COMMANDANT

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103D CONGRESS
2D SESSION

H. R. 3821

To promote construction and operation of passenger vessels in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1994

Mrs. UNSOELD (for herself, Mr. STUDDS, Mr. LIPINSKI, Mr. DICKS, Ms. CANTWELL, Ms. DUNN, Mr. KREIDLER, Mr. SWIFT, Mr. MANTON, Mr. BORSKI, Mr. HOYER, Mr. CUNNINGHAM, and Mr. JOHNSON of South Dakota) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Natural Resources

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A BILL

To promote construction and operation of passenger vessels in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Passenger Vessel Development Act".

SEC. 2. PURPOSE.

The purpose of this Act is to promote construction and operation of United States flag passenger vessels in the United States.

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SEC. 3. INTERIM COASTWISE PASSENGER TRADE ENDORSEMENT.

(a) ENDORSEMENT AUTHORIZED.—Chapter 121 of title 46, United States Code, is amended by inserting after section 12112 the following new section:

"§ 12113. Interim coastwise passenger trade endorsement

"(a) Before December 31, 2000, a certificate of documentation for a passenger vessel may be endorsed with an interim coastwise passenger trade endorsement, if the vessel is—

"(1) eligible for documentation under section 12102;

"(2) owned by, or demise chartered for at least 18 months to, a citizen of the United States for purposes of issuing a certificate of documentation with an interim coastwise passenger trade endorsement under section 2(e) of the Shipping Act, 1916 (46 App. U.S.C. 802(e));

"(3) at least 250 gross tons (as measured under chapter 143 of this title) and has at least 175 berths; and

"(4) not a ferry.

"(b) As a condition of issuing an interim coastwise passenger trade endorsement for a vessel, the Secretary shall require the owner or charterer of the vessel to enter

into one or more contracts for the construction in the United States of one or more vessels having a total berthing capacity that is at least 80 percent of the capacity of the vessel for which the endorsement is issued.

"(c) A vessel with a certificate of documentation with an interim coastwise passenger trade endorsement may be employed in the coastwise trade in the carriage of passengers.

"(d) On termination of a demise charter required under subsection (a)(2)(B) for a vessel, an interim coastwise passenger trade endorsement for the vessel may be continued for a period not to exceed 6 months on any terms and conditions that the Secretary of Transportation may prescribe.

"(e)(1) An interim coastwise passenger trade endorsement issued for a vessel under subsection (a) expires—

"(A) on the date that is 12 months after the date of issuance of the endorsement, if the owner or demise charter of the vessel fails to submit to the Secretary before the end of that 12-month period a letter that—

"(i) states the interest of the owner or demise charter, respectively, and a representative of a shipyard in the United States to enter into

a contract for the construction in the shipyard of at least one passenger vessel that has a total berthing capacity that is at least equivalent to 80 percent of the berthing capacity of the vessel for which the endorsement is issued; and

"(ii) is signed by the owner or demise charterer, respectively, and the representative;

"(B) on the date that is 24 months after the date of issuance of the endorsement, if the owner or demise charterer of the vessel does not enter into a contract before the end of that 24-month period for the construction in the United States of one or more passenger vessels described in subparagraph (A)(i);

"(C) on the date that is 3 years after the date of issuance of the endorsement, if construction of such a vessel under the contract is not begun before the end of that 3-year period; and

"(D) on the date that is 180 days after the date of delivery of a vessel for which construction is completed pursuant to the contract.

"(2) The Secretary may extend the period applicable under paragraph (1)(B) or (C), or both, for not more than 6 months.

"(f) An interim coastwise passenger trade endorsement for a vessel shall prohibit the operation of the vessel

in any trade that is served by another passenger vessel of at least 250 gross tons and having at least 175 berths that is documented under section 12106 of this title, unless the owner or charterer of the vessel so operated is also the owner of the other vessel having the endorsement.

"(g) Except as provided in this section, section 2113(b) of this title, or section 2(e) or 9(e) of the Shipping Act, 1916, a vessel with an interim coastwise passenger trade endorsement shall comply with all requirements applicable to a comparable passenger vessel that is otherwise documented under the laws of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 121 of title 46, United States Code, is amended by inserting after the item relating to section 12112 the following:

"12113. Interim coastwise trade endorsement.".

(c) NOTICE TO SECRETARY OF REFLAGGING.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) is amended—

(1) in subsection (c) by inserting "subsection (e)," after "Except as provided in"; and

(2) by adding at the end the following:

"(e) Notwithstanding subsection (c), a person may place under a foreign registry or operate under the authority of a foreign country, without approval of the Secretary

of Transportation, any vessel with an interim coastwise passenger trade endorsement under section 12113 of title 46, United States Code, if the person notifies the Secretary of that action—

"(1) before the 60-day period ending on the date that action is taken; and

"(2) within 12 months after—

"(A) the issuance of the interim coastwise passenger trade endorsement, or

"(B) the beginning of construction of the replacement vessels required for that issuance under section 12113 of title 46, United States Code.".

SEC. 4. SOLAS CONSTRUCTION STANDARDS.

Section 2113 of title 46, United States Code, is amended—

(1) by inserting "(a)" before "If"; and

(2) by adding at the end the following new subsection:

"(b) A documented vessel with an interim coastwise passenger trade endorsement—

"(1) is deemed to comply with parts B, C, and J of this title if the vessel meets the standards for passenger vessel construction for safety of life at sea issued under the International Maritime Organiza-

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tion convention to which the United States is a party; and

"(2) shall be issued by the Secretary the appropriate inspection, load line, and tonnage certificates if that vessel meets those standards.".

SEC. 5. CITIZENSHIP FOR PURPOSES OF DOCUMENTATION.

Section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), is amended by adding at the end the following:

"(e) For purposes of issuing a certificate of documentation with an interim coastwise passenger trade endorsement or a coastwise endorsement for transporting passengers in the coastwise trade under chapter 121 of title 46, United States Code, the controlling interest in a corporation is deemed to be owned or demise chartered by citizens of the United States if at least 51 percent of its stock is vested in citizens of the United States free from any trust or fiduciary obligation in favor of any person not a citizen of the United States.".

SEC. 6. AMENDMENT TO TITLE XI OF THE MERCHANT MARINE ACT, 1936.

Section 1101(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271(b)) is amended by striking "passenger cargo" and inserting "passenger, cargo,".

SEC. 7. PERMITS FOR VESSELS ENTERING UNITS OF NATIONAL PARK SYSTEM.

(a) PRIORITY.—Notwithstanding any other provision of law, the Secretary of Commerce may not permit a person to operate a vessel in any unit of the National Park System except in accordance with the following priority:

(1) First, any person that will operate a vessel that is documented under the laws of, and the home port of which is located in, the United States.

(2) Second, any person that will operate a vessel—

(A) that is documented under the laws of a foreign country, and

(B) which on the date of the enactment of this Act is permitted to be so operated.

(3) Third, any person that will operate a vessel other than a vessel described in paragraph (1) or (2).

(b) REVOCATION OF PERMITS FOR FOREIGN-DOCUMENTED VESSELS.—The Secretary of Commerce shall revoke permission granted by the Secretary for the operation of a vessel documented under the laws of a foreign country in a unit of the National Park System, if—

(1) a person requests permission to operate a vessel documented under the laws of the United States in that unit;

(2) the permission may not be granted because of a limit on the number of permits that may be issued for that operation.

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